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Honorable J. Michael Druhan
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Police Officers – Firefighters –
Retirement – Mobile County

A firefighter for the City of Mobile who was previously a disability retiree for 18 months is entitled to restoration of prior service credit upon his return to service. The firefighter may not aggregate the years of service before and after the break in service for purposes of retirement calculation. Because the firefighter had a break in service exceeding one year, the firefighter is not entitled to an additional benefit upon later separation from service unless the firefighter serves at least 10 years after returning to service.

Dear Mr. Druhan:

This opinion of the Attorney General is issued in response to your request on behalf of the Board of Trustees of the City of Mobile Police and Firefighters Retirement Fund ("Fund").

QUESTION

Is a firefighter for the City of Mobile who was previously a disability retiree for 18 months

entitled to restoration of service credit upon his return to work?

FACTS AND ANALYSIS

According to your request, a previously disabled firefighter has returned to work in the uniformed service. The firefighter received disability retirement benefits for 18 months prior to his return to service, and you question whether the firefighter must serve an additional 10 years before being entitled to an additional retirement benefit based upon his service after returning to work.

The Fund was created by Act 97-689. 1997 Ala. Acts 97-689, 1379. In 2001, Act 97-689 was amended by Act 2001-518. 2001 Ala. Acts No. 2001-518, 922. Section 4.02 of Act 2001-518 provides for the disability benefit of a firefighter who becomes physically or mentally disabled. *Id.* at 928-30.

Section 3.03 of Act 2001-518, entitled "Restoration of Retired Member of Other Former Member to Service," sets forth the conditions for restoration and the criteria for additional benefits from the Fund. *Id.* at 926-27. In pertinent part, this section states the following:

(a) *If a member entitled to a benefit under 4.01, 4.02, or 4.03(a) of the plan is restored to service as a uniformed officer, any benefit he or she may be receiving under Article IV shall cease and any election of an optional benefit in effect shall be void. If he or she is restored to service as a uniformed officer before he or she has a break in service exceeding one year, any service to which he or she was entitled when he or she retired or terminated service shall be restored to him or her, and upon his or her later retirement or termination, his or her benefit shall be based on the benefit formula then in effect and his or her salary and service before and after his or her break in service, reduced by an amount that is of equivalent actuarial value to the benefits he or she received under 4.01 or 4.03(a), if any, before his or her restoration to service. If he or she is restored to service as a*

uniformed officer after having a break in service exceeding one year, his or her service prior to the break in service shall be restored to him or her. Upon his or her later retirement or termination, the benefit he or she received under 4.01 or 4.03(a), if any, prior to his break in service shall recommence plus he or she shall receive an additional amount determined under the provisions of Article IV based on his or her service and his or her salary after his or her break in service. However, the member shall not be entitled to an additional benefit under 4.01 or 4.03(a) unless he or she has at least 10 years of service after he or she is restored to service, and the last 10 years of the service are without a break in service exceeding one year.

Id. at 926 (emphasis added).

Under the established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000).

The plain language of section 3.03(a) of Act 2001-518 places members returning to service into one of two categories: (1) those that had a break in service of one year or less; and (2) those that had a break in service exceeding one year. Officers returning after a break in service of one year or less are entitled to receive a retirement benefit upon separation from service based upon the retirement formula that includes all “service before and after his or her break in service.” 2001 Ala. Acts No. 2001-518, sec. 3.03(a), 926.

By contrast, officers returning after a break in service exceeding one year are entitled, upon later separation, to have their original benefit reinstated, plus an “additional benefit amount” calculated upon their years of service after the break in service. *Id.* A member “shall not be entitled to an additional benefit . . . unless he or she has at least 10 years of service after he or she is restored to service” *Id.*

Because the firefighter in question had a break in service exceeding one year, the member is not entitled to aggregate years of service for

purposes of calculating a retirement benefit. Rather, the firefighter is entitled to a separate additional benefit provided the member serves at least 10 years after restoration to service. Of course, because the firefighter is no longer disabled, upon subsequent retirement, he would also be entitled to a benefit under section 4.01 if the requirements for such benefit had been met prior to disability. 2001 Ala. Acts No. 2001-518, sec. 4.02(g), 930.

CONCLUSION

A firefighter for the City of Mobile who was previously a disability retiree for 18 months is entitled to restoration of prior service credit upon his return to service. The firefighter may not aggregate the years of service before and after the break in service for purposes of retirement calculation. Because the firefighter had a break in service exceeding one year, the firefighter is not entitled to an additional benefit upon later separation from service unless the firefighter serves at least 10 years after returning to service.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division